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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,032	10/06/2000	Christopher S. Nolan	420-002	1056

7590 12/16/2003

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EXAMINER

FOX, CHARLES A

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/684,032

Applicant(s)

NOLAN, CHRISTOPHER S.

Examiner

Charles A. Fox

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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In view of the appeal brief filed on September 22, 2003, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Drawings***

The drawing objection presented in paper number 3 are still in force. These objections must be addressed in the response to this action to avoid abandonment of the application.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1,2,4-6,9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fell et al. . In regards to claim 1 Fell et al. (US 3,951,284) disclose a moisture proof liner (20) for a shipping container comprising:

- four panels of impervious film to match the top, bottom, and sides of the container;

- two end panels to complete the liner;

- an access panel in the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

- a closure to seal the liner to protect the cargo from moisture.

In regards to claim 2 Fell et al. further disclose tubes (45,48) attached to the access openings of the liner (20).

Regarding claim 4 Fell et al. also disclose that the tubes (45,48) are closed with a tie (46) and tucked inside the container (30) during transport.

In regards to claims 5 and 6 Fell et al. also disclose access openings for containers having openings on one or more sides depending on the configuration of the container.

Regarding claims 9 and 10 Fell et al. teaches a method of installing a moisture proof liner for a container comprising the steps of:

- providing a liner with four elongated panels and two end panels of impervious material to complete the liner;

- cutting an access opening in the liner;

- positioning and erecting the liner in the container;

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transferring cargo into the container and sealing the liner to protect the moisture against moisture;

attaching an open ended tube to the access opening of the liner;

passing cargo through the tube and opening during transfer of the cargo.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4-6,9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. In regards to claim 1 Fell et al. (US 3,951,284) teach a moisture proof liner (20) for a shipping container comprising:

four panels of impervious film to match the top, bottom, and sides of the container;

two end panels to complete the liner;

an access panel in the end of the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

a closure to seal the liner to protect the cargo from moisture.

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While Fell et al. do not explicitly teach the opening in the side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to place the opening at a location in the liner corresponding to where there is an opening in the container.

In regards to claim 2 Fell et al. further teach tubes (45,48) attached to the access openings of the liner (20).

Regarding claim 4 Fell et al. further teach that the tubes (45,48) are closed with a tie (46) and tucked inside the container (30) during transport.

In regards to claims 5 and 6 Fell et al. also teach access openings for containers having openings on one or more sides depending on the configuration of the container.

Regarding claims 9 and 10 Fell et al. teaches a method of installing a moisture proof liner for a container comprising the steps of:

- providing a liner with four elongated panels and two end panels of impervious material to complete the liner;
- cutting an access opening in the liner;
- positioning and erecting the liner in the container;
- transferring cargo into the container and sealing the liner to protect the moisture against moisture;
- attaching an open ended tube to the access opening of the liner;
- passing cargo through the tube and opening during transfer of the cargo.

While Fell et al. do not explicitly teach the method of providing an opening in the side of the liner it would have been obvious to one of ordinary skill in the art, at the time of

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invention to provide the opening at a location in the liner corresponding to where there is an opening in the container.

Claims 3,7, and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al as applied to claims 1 and 2 above, and further in view of Krein et al.

In regards to claim 3 Fell et al. teach the limitations of claim 2 as above, they do not teach the liner and tubes as being a plastic sheet material joined by heat welding of the mating surfaces. Krein et al. (US 5,028,197) teach a plastic liner with joints that are fused together using heat. See column 5 lines 43-57.

In regards to claim 7 the limitations of claim 1 are met by Fell et al. as above, they do not specifically teach the liner as having gussets. However it would have been obvious to one of ordinary skill in the art, at the time of invention that gussets would be formed on the liner during the course of folding the liner and that the gussets would disappear as the liner was inflated.

In regards to claim 11 the limitations of claim 10 are met by Fell et al. as above. Fell et al. do not teach holding the upper corners of the tube to offer protection during transfer of cargo. Fell et al. do teach supporting the tube during loading and unloading with a stand (47) and a chute (44). It would have been obvious to one of ordinary skill in the art, at the time of invention that the supports for the tube taught by Fell et al. could be modified in many ways depending on the size of the tube and the nature of the cargo being transferred onto or off of the container.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. as applied to claim 1 above, and further in view of Derby.

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Fell et al. teach the limitations of claim 1 as above they do not teach the end panels as being gusseted and heat sealed. Derby US 5,746,862 teaches using a liner for a container with panels having gussets (22,24). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the liner taught by Fell et al. with the gussets taught Derby in order to allow easy storage of the liner when not in use as well as making and deployment of the liner easier.

### ***Response to Arguments***

Applicant's arguments filed September 22, 2003 have been fully considered but they are not persuasive. In regards the argument for claims 1 and 9 that there is no objective evidence to place the opening to the liner in the elongated side, the applicant is directed to column 2 lines 9-13 in the Fell et al. reference. In that passage Fell et al. disclose that the door to the container can be in any of the walls to the container. That is objective evidence that cannot be considered as hindsight reasoning as suggested by the applicant.

The arguments against the rejection of claims 5 and 6 also point out that the Fell et al. reference does not show a container with an opening at the mid point of an elongated wall. This is true, however Fell et al. as pointed out above discloses placing the opening to the liner at the same location as the door to the container. Since the applicant is not claiming the container it is considered to be a well know container, thus one of ordinary skill in the art would know the locations of its door and place the opening to the liner there as directed by the Fell et al. reference.



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The previous rejection of claim 7 has been withdrawn and a new rejection is presented above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 703-605-4294. The examiner can normally be reached between 7:00-5:00 Monday-Thursday.

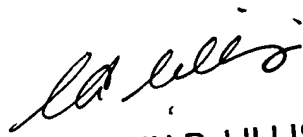
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

CAF

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12-2-03

  
EILEEN D. LILLIS  
SUPERVISORY PATENT EXAMINER  
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